

## TERMS OF USE

### Wyantenuck Country Club Website Terms of Use

Effective date: April 26, 2023

Last modified: April 26, 2023

### INTRODUCTION TO THIS AGREEMENT

These terms of use ("**Terms**") and all the documents expressly referred to in them (the "**Agreement**") are the terms and conditions of the agreement which you enter into with Wyantenuck Country Club "Wyantenuck", "**we**", "**our**", "**us**"), when you access our website <https://wyantenuck.org> (which includes any webpage containing these domain names, including any page, application or interface that is enabled for use by a mobile device or any webpage redirected from another domain name to this domain name and any service provided on the website) ("**Website**" or "**Site**");

Please read these Terms, together with all the documents referred to in it, carefully before you start to use our Website. By accessing and using our Website, including by registering an account, you indicate that you have read, understand and accept the terms and conditions of this Agreement and that you agree to abide by them each time you access and use our Website.

By using our Site, you agree to be bound by these Terms.

### ACCESS AND ACCOUNT SECURITY

The Members Area portion of our Website is password protected and allows you access to member information including name, address, telephone number, email address and other information ("Member Data").

You agree to keep all Member Data strictly confidential and are restricted to using Member Data solely for purposes deemed appropriate by us, including booking tee times and tennis courts. We have the right to disable, suspend or restrict any user identification name or password, whether chosen by you or allocated by us, at any time, at our discretion, including if, in our opinion, you have failed to comply with any of the provisions of this Agreement.

If you choose, or you are provided with a password or any other piece of information as part of our security procedures, you must treat such information as confidential, and you must not disclose it to any third party. You may not: (i) enter, select or use an email address owned or controlled by another person with the intent to impersonate that person, or, (ii) use a name or email address without appropriate authorization. We reserve the right in our sole discretion to refuse registration of, suspend or cancel a user identification name without notice, or to test the veracity of email addresses provided at any time. You shall be responsible for maintaining the confidentiality of your password and are fully responsible for all activities that occur under your login and password. Any user identification name and password chosen or provided to you for your access to the Site shall be for your personal use only and is non-transferable.

You are responsible for all uses of Member Data and for any acts or omissions during such use (including, without limitation, the entry into any transactions) and we shall be entitled to treat any access to or use of the Website (including without limitation the entry into any payment transactions) as having been duly authorized by you.

You agree to promptly notify us (i) of any loss or theft of Member Data; (ii) if you believe the confidentiality of any Member Data has been compromised; and (iii) of any actual or threatened unauthorized use of Member Data or the Website.

You agree to immediately notify us of any unauthorized use of your Member Data; or any other breach of security and (b) ensure that you exit from your account at the end of each session. We cannot and will not be liable for any loss or damage arising from your failure to comply with this section.

You shall comply with any security procedures specified by Us from time to time and, if access to the Website is through a third party server, any security procedures specified by that third party from time to time;

If you forget or lose your password, you should request a new password by contacting Us.

## **THE WEBSITE**

You acknowledge and agree that the Site and its contents, including, but not limited to, all photographs, information, data, member contact information, text, product descriptions, mission specializations, program initiatives, software, music, sound, graphics, video, messages, tags and/or other materials (collectively, the "Content") are proprietary or confidential information that belongs exclusively to Wyantenuck and is protected by applicable copyright, trademark, trade secret, patent or other proprietary rights and laws. You are not authorized to reproduce, republish, distribute, transmit, modify, sell or otherwise use the Content, or to create derivative works based on the Content, in whole or in part, without Wyantenuck express written authorization. This includes, but is not limited to, a prohibition on aggregating information on our Site that is in the public domain and publishing it elsewhere. Without limiting the above, you are not authorized to use the Content in order to gain a competitive advantage for marketing purposes (including third-party solicitations), to harass, abuse or harm others, or in a way that otherwise exceeds the scope of your authorized access to this Site. In addition, you are not authorized to use, access, search or obtain data from the Content of this Site by using any deep-link, framing, page scrape, robot, spider or other automatic device, program, algorithm or similar methodology.

All logos, slogans and trade dress, including the look and feel of the Site ("Trademarks") are trademarks owned by Wyantenuck to uniquely identify our Site and the services offered. You agree not to use these Trademarks anywhere without our prior written consent. In other words, by accepting this Agreement, you cannot use the Trademarks for any purpose.

### **Copyright Agent:**

We respect the intellectual property rights of others. If you believe that your work has been copied in a way that constitutes copyright infringement, please contact our Copyright Agent under the Digital Millennium Copyright Act, 17 U.S.C. § 512(c)(2),

Copyright Agent – Jennie VanDeusen  
[jen@wyantenuck.org](mailto:jen@wyantenuck.org)

413-528-0350  
PO Box 338  
Great Barrington, MA 01230

So that we can respond to your concerns, please send along the following in your notice to us:

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works are covered by a single notification, a representative list of such works.
- Identification of the material that is claimed to be infringing and information reasonably sufficient to permit us to locate the material.
- Your contact information, such as an address, telephone number, and, if available, an electronic mail address.
- A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.
- A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

#### **DISCLAIMER, LIMITATION ON LIABILITY AND INDEMNITY**

WYANTENUCK IS NOT RESPONSIBLE FOR THE CONTENT PRODUCED BY OR THE SERVICES RENDERED BY ANY THIRD PARTY THAT MAY BE REFERENCED ON THE SITE OR TO WHICH ACCESS MAY BE PROVIDED VIA THE SITE. WYANTENUCK MAY PROVIDE LINKS AND POINTERS TO INTERNET SITES MAINTAINED BY THIRD PARTIES ("THIRD PARTY SITES") AND MAY FROM TIME TO TIME PROVIDE THIRD PARTY MATERIALS ON THE SITE. WYANTENUCK DOES NOT OPERATE OR CONTROL IN ANY RESPECT, ANY INFORMATION, PRODUCTS OR SERVICES ON THESE THIRD PARTY SITES. THE SITE, THE MATERIALS AND PRODUCTS AVAILABLE IN OR ACCESSIBLE THROUGH THE SITE, AND ANY THIRD PARTY SITES ARE PROVIDED "AS IS" AND, TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, WYANTENUCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, AND WARRANTIES IMPLIED FROM A COURSE OF PERFORMANCE OR COURSE OF DEALING. WYANTENUCK DOES NOT PROMISE THAT THE FUNCTIONS CONTAINED IN SUCH MATERIALS AND PRODUCTS, OR IN THE SITE, WILL BE UNINTERRUPTED OR ERROR-FREE, WILL BE AVAILABLE FOR USE, THAT DEFECT WILL BE CORRECTED, OR THAT THE SERVICE, INCLUDING THE STORAGE SERVICES AND THEIR CONTENTS, OR THE SERVER THAT MAKES THEM AVAILABLE, ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. WYANTENUCK DOES NOT PROMISE OR MAKE ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF THE MATERIALS IN THE SITE OR IN THIRD PARTY SITES OR THE SERVICES PROVIDED BY THIRD PARTIES IN TERMS OF THEIR CORRECTNESS, ACCURACY, TIMELINESS, RELIABILITY, COMPLETENESS OR OTHERWISE.

YOU ASSUME ALL RISK OF ERROR AND/OR OMISSIONS IN THE SITE, INCLUDING THE TRANSMISSION OR TRANSLATION OF INFORMATION. YOU ASSUME FULL RESPONSIBILITY FOR IMPLEMENTING SUFFICIENT PROCEDURES AND CHECKS TO SATISFY YOUR REQUIREMENTS FOR THE ACCURACY AND SUITABILITY OF THE SITE, INCLUDING INFORMATION, AND FOR MAINTAINING ANY MEANS THAT YOU MAY REQUIRE FOR THE RECONSTRUCTION OF LOST DATA OR SUBSEQUENT MANIPULATIONS OR ANALYSES OF THE INFORMATION PROVIDED HEREUNDER. YOU

ACKNOWLEDGE AND AGREE THAT YOUR USE OF THE SITE, AND ANY INFORMATION SENT OR RECEIVED IN CONNECTION THEREWITH, MAY NOT BE SECURE AND MAY BE INTERCEPTED BY UNAUTHORIZED PARTIES.

IN NO EVENT WILL WYANTENUCK, ITS CONTRACTORS, SUPPLIERS, CONTENT-PROVIDERS, AND OTHER SIMILAR ENTITIES, AND THE OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AND AGENTS OF EACH OF THE FOREGOING, BE LIABLE TO YOU, OR ANY THIRD PARTY FOR ANY LOSSES OR DAMAGES, INCLUDING ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL OR SIMILAR DAMAGES, ALLEGED UNDER ANY LEGAL THEORY IN RELATION TO OR ARISING FROM THIS AGREEMENT OR OUR SERVICE, FOR REASONS INCLUDING, BUT NOT LIMITED TO, FAILURE OF OUR SERVICE, NEGLIGENCE, OR ANY OTHER TORT.

YOU AGREE TO DEFEND, INDEMNIFY AND HOLD US AND OUR REPRESENTATIVES HARMLESS FROM ANY CLAIMS BY YOU OR ANY THIRD PARTY WHICH MAY ARISE FROM OR RELATE TO THIS AGREEMENT OR THE PROVISION OF OUR SERVICE TO YOU, INCLUDING ANY DAMAGES CAUSED BY YOUR USE OF THE SITE, THEIR CONTENT AND ANY SERVICES AVAILABLE ON OR THROUGH THE SITE OR ACCEPTANCE OF THE OFFERS CONTAINED ON IT. YOU ALSO AGREE THAT YOU HAVE A DUTY TO DEFEND US AGAINST SUCH CLAIMS, AND WE MAY REQUIRE YOU TO PAY FOR AN ATTORNEY(S) IN SUCH CASES. HOWEVER, WE RESERVE, AND YOU GRANT TO US, THE RIGHT TO ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF ANY MATTER SUBJECT TO INDEMNIFICATION BY YOU HEREUNDER. YOU AGREE THAT THIS INDEMNITY EXTENDS TO REQUIRING YOU TO PAY FOR OUR REASONABLE ATTORNEYS' FEES, COURT COSTS, AND DISBURSEMENTS. IN THE EVENT OF A CLAIM SUCH AS ONE DESCRIBED IN THIS PARAGRAPH, WE MAY ELECT TO SETTLE WITH THE PARTY/PARTIES, AND YOU SHALL BE LIABLE FOR THE DAMAGES AS THOUGH WE HAD PROCEEDED WITH A TRIAL.

We will not be liable for any loss or damage caused by a distributed denial-of-service attack, viruses, malicious or impairing computer programs or other technologically harmful material that may infect your computer equipment, computer programs, data or other proprietary material due to your use of our Website or to your downloading of any material posted on it, or on any website linked to it.

We do not guarantee the security of the online services or any systems connected with the use of the Website (including the internet and your hardware and software, or any information passed through such systems. We do not guarantee access to the Website or any systems used in accessing our services will be continuous or virus or error free.

Any material downloaded or otherwise obtained through the use of the Website is done at your own discretion and risk and that you will be solely responsible for any damage to your computer system or loss of data that results from the download of any such material. No advice or information, whether oral or written, obtained by you from us or through or from the Website shall create any warranty not expressly stated in this Agreement.

## **ACCESSING OUR WEBSITE**

As a condition of your access and use of our Website, you warrant to us that you have the right, authority and capacity to enter into and be bound by this Agreement.

We have no obligation to monitor or moderate any user's activity or use of our Website, however we retain the right at all times to monitor, retain and disclose any information as

necessary to satisfy any applicable law, regulation, legal process or regulatory authority request.

Without any admission of liability, we may from time to time assess any possible risks for users from third parties when they use the Website, and we will decide in each case whether it is appropriate to use moderation of the relevant service (including what kind of moderation to use) in the light of those risks. We may appoint certain users of the Website to act as moderators. We expressly exclude our liability for any loss or damage arising from the use of the Website by a user in contravention of our Terms (including our Content standards), whether the service is moderated or not. Any action that we might take in respect of a user or regarding Content is neither an admission of liability on our part nor an indication of the breach or otherwise of any standard or term by a user of particular Content. Where we do moderate the Website, we will normally provide you with a means of contacting the administrator, should a concern or difficulty arise.

We encourage the use by you of the contact information which we have placed on the Website which allows you to report any Content that is in breach of this Agreement or is in any other way objectionable and to notify moderators of any abuses or breaches of this Agreement.

When using our Website, your personal data will be processed in accordance with the terms of our [Privacy Policy](#) which forms part of this Agreement. Our Privacy Policy sets out how we may use information about you collected during your use of the Website.

You are responsible for making all arrangements necessary for you to have access to our Website.

## **RIGHT TO USE AND RESTRICTIONS**

You agree that you shall not (and you agree not to allow any third party to):

- Copy any portion of the database, except as expressly permitted herein;
- Use Member Data in any way other than is expressly approved by Wyantenuck. Among other things, you may not use Member Data to:
  - Defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others.
  - Publish, post, upload, distribute or disseminate any inappropriate, profane, defamatory, infringing, obscene, indecent or unlawful topic, name, material or information.
  - Make political or social commentary, marketing, charitable, campaigning, for public relations or political purposes of any kind, advertise, or offer to sell or buy any goods or services for any business purpose, conduct any business unrelated to Wyantenuck club activity, unless We expressly approve such activity.
  - Upload files that contain software or other material protected by intellectual property laws (or by rights of privacy or publicity) unless you own or control the rights thereto or have received all necessary consents.
  - Upload files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of another's computer.
  - Conduct or forward surveys, contests, pyramid schemes or chain letters.

- Falsify or delete any author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other material contained in a file that is uploaded.
  - Restrict or inhibit any other user from using and enjoying the Website.
  - Violate any code of conduct or other guidelines which may be applicable for any particular communication.
  - Harvest or otherwise collect information about others, including e-mail addresses, without their consent.
  - Violate any applicable laws or regulations.
  - Conduct any other activity that Wyantenuck, in its sole discretion, deems inappropriate.
- Use or remove any copyright, trademark or other proprietary rights notices contained in or on the Website or in or on any Content or other material obtained via the Website;
  - Use any robot, spider, website search/retrieval application, or other automated device, process or means to access, retrieve or index any portion of the Website;
  - Collect any information about other users (including usernames) for any purpose other than to conduct approved Wyantenuck club activity;
  - Create user accounts by automated means or under false or fraudulent pretences or create multiple log ins;
  - Create or transmit unwanted electronic communications such as “spam”, or make excessive challenges or invitations, to other users or otherwise interfere with other users’ enjoyment of the Website;
  - Transmit any malware, ransomware, spyware, viruses, worms, defects, Trojan horses or other items of a destructive nature to other users or on the Website;
  - Use the Website to violate the security of any computer network, crack passwords or security encryption codes, transfer or store illegal material including that are deemed threatening or obscene;
  - Use any device, software or routine that interferes with the proper working of the Website , or otherwise attempt to interfere with the proper working of the Website ;
  - Take any action that imposes, or may impose in our sole discretion, an unreasonable or disproportionately large load on our IT infrastructure;
  - Use the Website intentionally or unintentionally, to violate any applicable law;
  - Collect or store personal data about other users in connection with the prohibited activities described in this paragraph;
  - Engage in or promote any contests, pyramid schemes, chain letters, unsolicited e-mailing or spamming via the Website;
  - Use the Website advertising, marketing, charitable, campaigning, for public relations or political purposes of any kind;

- Impersonate any person or entity; or
- Upload, post, e-mail, transmit or otherwise make available using the Website any material that you do not have a right to make available under any law or contractual obligation which includes a breach of third party intellectual property rights.

## **TERMINATION**

We reserve the right terminate this Agreement immediately without notice to you at any time in our sole discretion.

## **COMPLAINTS**

If you believe that any activity breaches this Agreement or is in any other way objectionable, please notify us through [jen@wyantenuck.org](mailto:jen@wyantenuck.org) specifying the full details and specifying the reasons for your objections. If you do not provide us with sufficient information, we may be unable to process your complaint. We reserve the right to investigate and we will determine, in our discretion, what action (if any) to take. You are solely responsible for your interactions with other users of the Website. While we reserve the right to monitor or to intervene in disputes between you and other users, we have no obligation to do so.

## **DISPUTES WITH THIRD PARTIES**

You must tell us immediately if anyone makes or threatens to make any claim or issue legal proceedings against you relating to your use of the Website. You will, at our request, immediately stop the act complained of. If we ask you to, you must confirm the details of the claim in writing. If you fail to stop the act or acts complained of we reserve the right to take any and all appropriate action against you under the terms of the Agreement.

## **LINKS FROM OUR WEBSITE**

Where our Website contains links to other websites and resources provided by our partners or other third parties, these links are provided for your information only. We have no control over the contents of those websites or resources and accept no responsibility for them or for any loss or damage that may arise from your use of them. If you link to any such websites you leave our Website and do so entirely at your own risk.

## **CONTACT FROM US**

In the course of providing you services and in respect of your use of the Website, we may need to communicate with you via email or the other details that you have submitted to us. You agree to receive emails which are specific to your account and necessary for the normal functioning of the Website, including emails which help inform users about functionality of the Website.

## **JURISDICTION AND APPLICABLE LAW**

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. The offer and acceptance of this contract is deemed to have occurred in the Commonwealth of Massachusetts.

By using the Site, you agree to submit to the personal and exclusive jurisdiction of the courts located within Berkshire County in the Commonwealth of Massachusetts with respect to any claims arising from these Terms or your use of the Site.

The rights and remedies contained in this Agreement are cumulative and not exclusive of rights or remedies provided by law.

YOU HEREBY KNOWINGLY AND VOLUNTARILY WAIVE THE RIGHT TO A JURY TRIAL IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE MATTERS CONTEMPLATED HEREBY.

## **AMENDMENTS**

We may revise this Agreement at any time by amending the pages upon which they appear on our Website without giving notice of such modifications. Such modifications become effective immediately upon posting of the modified terms on the Website. You agree to review the Agreement periodically so that you are aware of any modifications. Your continued use of the Website after any modifications indicates your acceptance of the modified Agreement.

## **WAIVER**

A failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of that right or remedy or the exercise of another right or remedy.

## **SEVERABILITY**

In the event that any clause or any part of any clause in this Agreement is declared invalid or unenforceable, by the judgment or decree by consent or otherwise of a court of competent jurisdiction from whose decision no appeal is or can be taken, all other provisions contained in this agreement shall remain in full force and effect and shall not be affected by such finding for the term of this Agreement.

## **ASSIGNMENT AND ENTIRE AGREEMENT**

We may assign or subcontract any or all of our rights and obligations of our Agreement with you to a third party at any time, at our discretion. You may not, without our prior written consent, assign or dispose of any of your rights or obligations arising under this Agreement.



This Agreement contains the entire agreement and understanding between the parties relating to our Website, and supersedes any and all prior agreements, arrangements, statements and understandings, except for any fraud or fraudulent representation by either you or us. In the event of any inconsistency between the Privacy Policy and these Terms then these Terms take priority.

## **SUBMISSIONS**

You acknowledge and agree that any questions, comments, suggestions, ideas, feedback and other information about the Website provided by you to us are non-confidential and may be used by us at our discretion.

## **PRIVACY NOTICE**

To review the Privacy Notice, please click [HERE](#)

## **QUESTIONS**

If you have any questions regarding the Site or this Agreement, please email [jen@wyantenuck.org](mailto:jen@wyantenuck.org)